

10-1-1944

Constitution Making in 1844

J A. Swisher

Follow this and additional works at: <https://ir.uiowa.edu/palimpsest>

Part of the [United States History Commons](#)

Recommended Citation

Swisher, J A. "Constitution Making in 1844." *The Palimpsest* 25 (1944), 311-320.
Available at: <https://ir.uiowa.edu/palimpsest/vol25/iss10/4>

This Article is brought to you for free and open access by the State Historical Society of Iowa at Iowa Research Online. It has been accepted for inclusion in The Palimpsest by an authorized administrator of Iowa Research Online. For more information, please contact lib-ir@uiowa.edu.

Constitution Making in 1844

Astute, discerning William Penn observed that "Governments, like clocks, go by the motion men give them . . . Wherefore governments rather depend upon men, than men upon governments." But in 1844 men of Iowa had not yet taken the necessary steps to lay aside Territorial rule and assume the duties and responsibilities of State government. In that year the first substantial advance was made in the direction of statehood, when a convention of delegates framed a constitution. The men who drafted this first organic law for the State were, like the makers of the Federal constitution, pioneers in a new field. A study of the records of the Federal constitutional convention and the first Iowa constitutional convention reveals several similarities and some contrasts.

Seventy-two leading men of the colonies had been offered or given credentials to serve in the Federal constitutional convention of 1787. Only fifty-five of them attended. The convention met in the Statehouse in Philadelphia in a hall about fifty feet square, the walls of which were "already eloquent with sacred memories." Members of the

convention were, for the most part, young men — their median age was forty-two. Two of the most distinguished men of the convention — Benjamin Franklin and George Washington — however, were not young. Franklin, the oldest member of the convention was eighty-one, and Washington had attained the age of fifty-five. Among the delegates were a few merchants, financiers, farmers, doctors, educators, and soldiers. Of the remaining number, at least thirty-one were lawyers.

“How can we know these young men” of the Federal Constitutional Convention, “in their laces and knee breeches”, asked an eminent historian. “Only fragmentary glimpses were caught of them during the summer of 1787.” In like manner one may well ask, how can we know the young men of the Iowa constitutional convention of 1844, rustic in appearance, as they came, many of them on horseback, from distant settlements across the Iowa prairies to attend the convention.

Fragmentary glimpses were caught of them during the fall of 1844. The Iowa City newspapers contained interesting data concerning their arrival, and their debates. In 1900 these fragments were carefully collected by Dr. Benjamin F. Shambaugh and published as source material by the State Historical Society of Iowa. From these items may now be gleaned some facts about

the convention which convened in Representatives Hall one hundred years ago.

For this constitutional assembly seventy-three delegates had been chosen, and seventy-two of them attended. It had been determined by law that the convention should meet on the first Monday in October, at the Territorial Capitol in Iowa City, and efforts were made to have everything ready on that date. Representatives Hall, like the hall in Philadelphia, was about fifty feet square — fifty-two by forty-three to be exact. It was not yet “eloquent with sacred memories”, but was destined to become historic. A comment in the *Iowa City Standard* of September 22, 1844, revealed the appearance of the convention hall. “We are gratified to state,” reported the *Standard*, “that the Territorial Agent is actively engaged in preparing accommodations for the Convention to form a Constitution, appointed to assemble on Monday week.” “The Southern room of the 2nd floor of the Capitol has been plastered, &c., and the necessary furniture is either procured or in preparation. A carpet the Convention will probably have to dispense with, as there are no available funds with which to purchase one, and credit cannot be procured. We presume, however, that the character of the Constitution will not suffer from this deficiency.”

The delegates who assembled in this newly equipped convention hall to form a State constitution were young men — younger, indeed, than the men who framed the Federal constitution. The median age was thirty-eight. Seven of them were in their twenties, thirty-four were in their thirties, and only two — Robert Lucas and Henry Robinson, a farmer from Des Moines County — were more than sixty years of age. The personnel of this convention differed from that of the Federal convention in that a majority of them — forty-one in all — were farmers, and only ten were lawyers. There were in the convention six physicians, four merchants, three mechanics, two miners, and two millwrights. But there were no bankers, no teachers, and no ministers among them. One of the members, Robert Lucas, had previously served as Governor of the Territory of Iowa. Another, James Clarke, would later serve in that office; and two of the delegates, Stephen Hempstead and Ralph P. Lowe, were destined to become Governors of the State.

On Monday, October 7th, the convention was called to order by Francis Gehon of Dubuque County, and Ralph P. Lowe of Muscatine County was named president *pro tem*. On the following day, Shepherd Leffler of Des Moines County was unanimously elected President of the convention.

"Iowa, young, beautiful and blooming as she now is", he proclaimed as he took the gavel, "endeared to us by every attachment which can bind us to our country, may at no distant day, for everything that is great, noble or renowned, rival if not surpass the proudest State of the American confederacy." President Leffler designated eleven standing committees to work on various problems that were before the convention. These consisted of committees on the bill of rights, executive department, legislative department, judicial department, suffrage and citizenship, education and school lands, corporations, state boundaries, county boundaries, county organization, internal improvements, and state debts.

At the first session of the convention, the meeting was opened with prayer by Rev. Nicholas Snethen of the Methodist Protestant Church. Two days later Elijah Sells of Muscatine County offered a resolution to provide for prayer each morning. The motion was laid on the table and taken up again on the following day. William W. Chapman of Wapello County favored the resolution. Francis Gehon thought it "would not be economical" for the convention sitting at an expense of \$200 to \$300 per day, and time was money.

J. S. Kilpatrick of Jackson County opposed the

resolution as it would be compelling men to listen to what they were opposed to, and violated one of the inalienable rights of men.

Andrew Hooten of Des Moines County opposed the resolution and reminded the convention of an anecdote of Benjamin Franklin who as a boy inquired of his father why it would not be better to say grace over the whole barrel of pork at once and dispense with table grace.

Elijah Sells had not expected opposition to the resolution, and Robert Lucas regretted that there should be contention on the subject. He "could not believe that any disbelieved in a superintending Providence." He reminded the convention, too, that Benjamin Franklin had made the motion for prayer in the Federal constitutional convention and that this had been followed everywhere as a matter of custom.

Gideon S. Bailey of Van Buren County said that whenever politics and religion were mingled, excitement was created. He did not object to prayer on the first day. But to continue it each day would cost two or three hundred dollars. "Why not be economical in this as well as in other things?" Eventually the resolution was indefinitely postponed by a vote of forty-four to twenty-six.

Economy was the guiding principle of the con-

vention. Salaries of the state officers were intended to be in harmony with the general economic level of frontier society. "For the first ten years after the organization of the Government," according to the constitution, "the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judges of the Supreme and District Courts, each one thousand dollars." Members of the General Assembly were to receive not more than two dollars per day for the first fifty days of the session and not to exceed one dollar per day after the first fifty days. In addition to this compensation, however, they were allowed two dollars for each twenty miles traveled in going to and returning from the place of meeting.

The Federal constitution was promulgated in the name of the people, and this recognition of popular sovereignty was accepted by the pioneers of Iowa. According to the first article, the constitution of 1844, like the United States constitution, was designed to establish justice, insure tranquility, provide for the common defense, promote the general welfare, and secure the blessings of life, liberty, and the pursuit of happiness. To this end a bill of rights was included in the first constitution of Iowa, which not only guaranteed the cus-

tomary rights of free people but declared that all men are naturally free and that all political power, being derived from the people, is subject to their control at all times. Slavery was prohibited and aliens were guaranteed the same property rights as citizens. The bill of rights added to the Federal constitution contained ten articles, but there were twenty-three sections in the first Iowa description of civil liberty.

The principle of separation of powers, upon which the structure of the national government was founded, was specifically recognized in the Iowa constitution of 1844. Indeed, the form of government was almost identical — a bicameral legislature composed of a Senate and a House of Representatives, a chief executive and a substitute who was to preside over the Senate, and a judiciary consisting of a Supreme Court and district courts. The proportionate size of the two branches of the General Assembly appears to have been modeled upon Congress for the House could never be less than two or more than three times as large as the Senate. In the original Congress, the House of Representatives was two and one-half times as large as the Senate.

In the Federal constitutional convention of 1787, the question of boundaries was not a major issue. Indeed, the boundaries of the United

States are not designated in the Federal constitution. The question of territorial limits was covered by the simple provision that when the constitution should be ratified by nine States it should become operative in the area contained in the States so ratifying, and by the further provision for the admission of new States. In the Iowa constitutional convention of 1844, however, the size and shape of the State was a question of prime importance.

Early in the convention the Committee on Boundaries reported in favor of boundaries that were in substantial agreement with those which had been proposed by Robert Lucas in 1838. Accordingly, Iowa would be bounded on the south by the State of Missouri, on the west by the Missouri River, on the east by the Mississippi River, and on the north by the Minnesota River, and a line from the mouth of the Blue Earth River to the mouth of the Big Sioux River. At that time, the exact location of the northern boundary was not very certain because the maps of the country were inaccurate, and so Robert H. Gower of Cedar County suggested that the forty-fifth parallel be made the northern boundary of Iowa. William W. Chapman opposed this proposal because it would make the State too large. Robert Lucas concurred in this opinion, saying that Iowa would then embrace an area of more than 120,000 square

miles, including a large range of broken and comparatively valueless country belonging to the Sioux Indians, "the title to which would hardly ever be extinguished." John C. Hall of Henry County proposed the parallel of forty-two degrees and thirty minutes as the northern boundary, whereupon O. S. X. Peck of Lee County suggested the forty-fourth parallel as a compromise.

In the end, however, the convention adopted the Lucas boundaries. When Congress considered ratification of the constitution for admission of Iowa to the Union, considerable opposition developed toward such a large State. With little concern for the natural features of the country, the national legislature materially reduced the size of the proposed State of Iowa. But the people of Iowa refused to join the Union under such conditions. Twice the amended constitution was submitted for popular approval and twice it was rejected. While there were partisan arguments against Statehood and criticisms of particular sections, the principal cause of the negative voting was unsatisfactory boundaries.

Clearly, William Penn was right: "Governments depend upon men." In 1844 men in authority were not willing to settle their differences in the matter of boundaries, and so the work of the convention came to naught.

J. A. SWISHER